

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ZHN, LLC,

Plaintiff,

v.

Case No. CIV-12-1289-M

RANDY MILLER, LLC

RANDY L. MILLER,

LIPPARD AUCTIONEERS, INC.,

TROY LIPPARD

ANGIE LIPPARD,

BRADY LIPPARD,

JERRY WHITNEY, and

UNITED COUNTRY REAL ESTATE,

INC. d/b/a UNITED COUNTRY

AUCTION SERVICES AND

UNITED COUNTRY REAL

ESTATE SERVICES,

Defendants.

RANDY MILLER, LLC,

RANDY L. MILLER, and

LIPPARD AUCTIONEERS, INC.,

Third Party Plaintiffs,

v.

ALEXANDER MAGID

a/k/a ALEX MAGID,

Third Party Defendant.

RESPONSE OF DEFENDANTS LIPPARD AUCTIONEERS, INC., TROY LIPPARD, ANGIE LIPPARD, BRADY LIPPARD, JERRY WHITNEY, AND UNITED COUNTRY REAL ESTATE, INC. TO MAGID'S DKT. 276 MOTION TO DEFER COMPLIANCE WITH THE AMENDED SCHEDULING ORDER

COME NOW Defendants, Lippard Auctioneers, Inc., Troy Lippard, Angie Lippard, Brady Lippard, Jerry Whitney, and United Country Real Estate, Inc. d/b/a United Country (collectively, "Defendants"), and respectfully submit their response in opposition to Third-Party Defendant Alexander Magid's Motion to Defer Compliance with the Amended Scheduling Order. In opposition thereof, Defendants state as follows:

1. Third-Party Defendant Alexander Magid ("Magid") requests to defer his (and only his) compliance with this Court's Scheduling Order setting the deadline for the Final Pretrial Report on February 19, 2015.

2. The very purpose of a pretrial order is to ensure the "economical and efficient trial of every case on its merits without chance or surprise." *Hull v. Chevron U.S.A., Inc.*, 812 F.2d 584, 588.

3. Unlike previous instances where this Court has granted the parties' requests for extensions of time, this case is scheduled for trial in less than three (3) weeks. Deferring compliance with Magid's portion of the Final Pretrial Report would amount to trial by surprise which would prejudice Defendants.

4. Though Magid has filed a dispositive motion, so have other parties in this matter. *See* Dkt. Nos. 135, 180, 183, 185, 186, and 187. The mere fact that Magid's Motion to Dismiss has not yet been ruled on does not demonstrate good cause to defer his compliance with this Court's scheduled date for the Final Pretrial Report.

5. Magid's Motion to Defer Compliance with the Amended Scheduling Order also states that he wishes to pursue additional discovery. Pursuant to this Court's Scheduling Order, discovery was to be completed by February 1, 2015. Magid has had ample time to complete discovery in this matter.

6. The claims against Magid individually are the same as those asserted against ZHN, LLC. *See* Dkt. Nos. 83 and 227, both asserting breach of contract for failing to close pursuant to the terms set forth in the contracts. Magid, being the sole member of ZHN, LLC, is intimately familiar with the facts of this case and should be required to set out his contentions in the Final Pretrial Report pursuant to Appendix IV to the Local Rules of this Court.

WHEREFORE, Defendants respectfully request that Magid's Motion to Defer Compliance with the Amended Scheduling Order be denied.

Respectfully submitted,

HOLDEN & CARR

s/ Shawna L. McCalip

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2015, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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s/ Shawna L. McCalip

Shawna L. McCalip

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